HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIM. REVISION APPLICATION NO. 47 OF 2005.

Mahendra Bansi Kanojia. ..Petitoiner.

Versus.

Smt. Pushpa Mahendra Kanojia & Anr...Respondents.

Mr. A. S. Khandeparkar i/b Khandeparkar & Associates for the petitioner.

Suvarna B. Telgote for the respondents.

CORAM: S. B. MHASE &
SMT. NISHITA MHATRE, JJ.

DATE: FEBRUARY 5, 2007.

P.C.

1. Rule. Returnable forthwith. By consent forthwith taken up for hearing.

2. This is criminal revision application filed by the husband challenging the order passed by the Principal Judge, Family Court, Mumbai on 22nd November 2004 in Miscellaneous Application No. 83 of 2004.

3. In a proceeding under section 125 of the Code of Criminal Procedure, 1973, being Miscellaneous Application No. 39 of 2000, already the maintenance at the rate of Rs. 600/- per month was granted to respondent - wife. Thereafter Miscellaneous Application

No. 83 of 2004 was filed for the enhancement of the said amount of maintenance and by the aforesaid order dated 22nd November 2004 the Family court has enhanced the amount of maintenance to Rs.1000/- per month. Being aggrieved and dissatisfied by the said order revision petitioner has approached to this Court.

4. The main grievance of the learned counsel for the revision petitioner is that after the service of notice of Miscellaneous Application No. 83 of 2004, the revision petitioner appeared and was seeking time for the first time and at that time, in stead of granting time to him, the impugned order was passed by the Principal Judge of the Family Court. Thus, he submits that the reply was not filed by the husband answering the miscellaneous application No. 83 of 2004. He further submits that even the evidence of the respondent - wife was not recorded and there is no evidence brought on record to demonstrate that there was change in the circumstances so as to modify the order of maintenance.

5. The learned counsel for the respondent states that no doubt the evidence was not recorded and reply was not filed yet the queries were made to the revision petitioner by the Court and thereafter the order was passed. With due respect to the learned Principal Judge

of the Family Court, we find that the procedure followed by the Family Court is not in accordance with the law. In fact the opportunity ought to have been given to the revision petitioner to file his say and thereafter the evidence of both parties should have been recorded so as to ascertain whether there is/are change/s in the circumstances so as to enhance the amount of maintenance. The procedure as desired under the Code of Criminal Procedure has not been followed and therefore the order suffers and we are inclined to set aside the impugned order. We, therefore, allow the revision and set aside the impugned order. The order dated on 22nd November 2004 passed by Family Court, Mumbai in Miscellaneous Application No. 83 of 2004 is hereby set aside and it is further directed that the revision petitioner shall present himself before the Family Court on 20th February 2007 and file a reply on the application on the same day, thereafter the Family Court shall, in accordance with law, record evidence of both sides by giving appropriate opportunity, and thereafter decide as to whether the amount is to be enhanced or not. The whole exercise shall be completed within a period of three months from the receipt of copy of this order.

(SMT.NISHITA MHATRE,J.) **(S.B.MHASE,J.)**

:sachin/2007/nnm/..